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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-----------------------|---------------------|------------------|
| 10/828,661 | 04/21/2004 | Raymond A. McClanahan | 014-304-1 | 4929 |
| 7590 | 11/16/2006 | | EXAMINER | |
| Ray McClanahan 725 N. W. 19th Ave Portland, OR 97209 | | | LEWIS, KIM M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3772 | |

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/828,661

Applicant(s)

MCCLANAHAN ET AL.

Examiner

Kim M. Lewis

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3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-14 is/are allowed.
- 6) ☒ Claim(s) 1,3,15,16,27 and 30 is/are rejected.
- 7) ☒ Claim(s) 2, 17-26, 28 and 29 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Detailed Action.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,3, 15,16, 27 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,238,357 ("Kawaguchi et al.").
3. As regards claims 1, 3, 15 and 16, Kawaguchi et al. disclose all features of the claimed invention. More specifically, Kawaguchi et al. disclose an orthotic foot platform apparatus/orthotic toe spacer (10) comprising inter-digital column/spacers (141, 142, 143, 144) for extending vertically between the toes, the column /spacers being width adjustable for urging laterally apart the adjacent toes that the column/spacer extends between to a defined inter-digital spacing (col. 4, lines 62-64). The columns/spacers having upper and lower generally parallel region. Kawaguchi et al. also disclose one or more interconnecting web structures (2 and 3 in Fig. 4) fixedly attached to and expanding across the upper and lower regions of the columns/spacers relative to one another in a generally parallel configuration to produce a toe channel between the columns/spacers for receiving toes.

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As can be read from col. 3, lines 44-45, the columns/spacers are width adjustable to fix inter-digital spacing. Also disclosed is that the columns/spacers includes a pressurizable bladder, note col. 5, lines 4-26.

As to the method in claims 27 and 30, mere use of the device of Kawaguchi et al. anticipates the steps of fitting a foot of a user with an appliance and adjusting the width of the spacers by pressurizing the spacers. Applicant should also not strap (200) which fastens the device to the foot.

Allowable Subject Matter

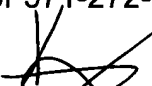
4. Claims 4-14 are allowed.
5. Claims 17-26, 28 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Monday to Friday, from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kim M. Lewis
Primary Examiner
Art Unit 3772

kml
November 13, 2006